

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-854X

ALLEGHENY AND EASTERN RAILROAD, INC.—ABANDONMENT EXEMPTION—IN
ELK AND CAMERON COUNTIES, PA

Decided: June 30, 2008

Allegheny & Eastern Railroad, Inc. (A&E),¹ filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon an 18.9-mile line of railroad extending between milepost 131, near St. Marys, in Elk County, and milepost 149.9, southeast of Emporium, in Cameron County, PA. Notice of the exemption was served and published in the Federal Register on September 30, 2003 (68 FR 56377-78). By decision and notice of interim trail use or abandonment (NITU) served October 30, 2003 (October 30 decision), the proceeding was reopened and the County of Cameron, in cooperation with the County of Elk, was authorized to negotiate an interim trail use/rail banking agreement with A&E for the right-of-way in this proceeding, pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).² The negotiating period under the NITU was extended by decisions served on April 12, 2004, July 22, 2004, October 25, 2004, April 22, 2005, July 22, 2005, October 21, 2005, April 21, 2006, and October 13, 2006. By decision and notice of interim trail use or abandonment served on December 29, 2006 (December 29 decision), the proceeding was reopened and a replacement NITU applicable to the West Creek Recreational Trail Association, Inc. (WCRTA), as interim trail user, was issued.³ By decisions served on January 12, 2007, April 13, 2007, October 10, 2007, January 8, 2008, and March 7, 2008 (March 7 decision), the negotiating period under this NITU was extended.

The March 7 decision also granted a petition to intervene in this proceeding filed by Robert Troha, on behalf of himself and members of a class of owners of property adjacent to the subject railroad line (collectively, Petitioners). Petitioners also had filed a motion in opposition

¹ As of January 1, 2004, A&E merged with Buffalo & Pittsburgh Railroad, Inc. (BPRR), with BPRR as the surviving entity.

² The October 30 decision also made the exemption subject to a public use condition, a historic preservation condition, and two environmental conditions. The public use condition expired on April 28, 2004, and may not be extended. The section 106 historic preservation condition was removed by decision served on December 1, 2003. The two environmental conditions remain in effect.

³ The December 29 decision also vacated the NITU granted in the October 30 decision.

to an extension of the NITU negotiating period, arguing that an extension would be prejudicial to Petitioners' class action lawsuit against the United States pending in the U.S. District Court for the Western District of Pennsylvania⁴ because the court has deferred any ruling on the merits of their claim until a final agreement has been reached between the railroad and the trail's sponsor, WCRTA. The March 7 decision denied Petitioners' motion and granted the extension until June 6, 2008.

On June 9, 2008, WCRTA filed a request to extend the NITU negotiating period for an additional 90 days, until September 4, 2008. WCRTA states that, despite several attempts, the parties have not been able to reach an agreement and are not likely to do so by the June 6, 2008 deadline. In a response received on June 10, 2008, A&E concurs in the request to extend the negotiating period. A&E states that it has submitted what it believes is a final form of an agreement to WCRTA for execution, and that the agreement anticipates that closing will be held within 60 days after execution by both parties.

On June 10, 2008, Petitioners filed another motion in opposition to any extension of the NITU negotiating period beyond the June 6, 2008 deadline. Once again, Petitioners argue that a further extension of the NITU negotiating period would be prejudicial to their pending suit because the court has deferred any ruling on the merits of their takings claim until a final trail use agreement has been reached.

The requested extension of the NITU negotiating period will be granted. As discussed in the March 7 decision, under the Trails Act, the trail use program is voluntary and consensual between the railroad and the trail user. See Citizens Against Rails to Trails v. STB, 267 F.3d 1144 (D.C. Cir. 2001); Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986). When a carrier consents to continuing negotiations and has not consummated abandonment of the line, the Board continues to have jurisdiction to grant an extension. Under the circumstance, a further extension of the negotiation period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996).⁵ An extension of the negotiating period will promote the establishment of trails and rail banking consistent with the Trails Act. Accordingly, as agreed by the parties, the negotiating period will be extended from June 6, 2008, to September 4, 2008. Given the time

⁴ Troha et al. v. United States, No. 05-191E (W.D. Pa. filed June 20, 2005). In their lawsuit, Petitioners allege that the Surface Transportation Board's (Board) issuance of the NITU deprived them of their rights to possession, control, and enjoyment of their land following the cessation of railroad operations and constituted a taking of Petitioners' property for public use without just compensation, for which the Fifth Amendment of the United States Constitution requires that just compensation be paid.

⁵ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

that has elapsed since abandonment was authorized, the parties again are urged to conclude their negotiations so that further extensions are not necessary.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Petitioners' motion in opposition to an extension of the NITU negotiating period is denied.
2. WCRTA's request to extend the NITU negotiating period is granted.
3. The negotiating period under the NITU is extended for 90 days, until September 4, 2008.
4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary